

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

JUSTIN COOK,

Plaintiff,

v.

**CRIMINAL ACTION NO. 3:07-CV-91
(BAILEY)**

JIM RUBENSTEIN, et al.,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATIONS

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Standing Order, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on January 30, 2009 [Doc. 73].

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due within ten (10) days after being served with a copy of the R & R pursuant to 28 U.S.C.

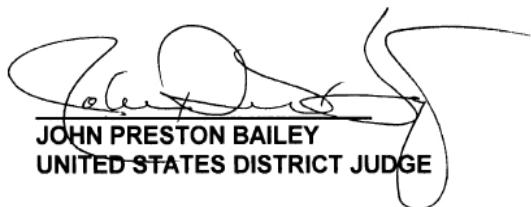
§ 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on February 19, 2009. To date, neither party has filed objections. Accordingly, this Court will review the R & R for clear error.

Having reviewed the record and the magistrate judge's R & R, it is the opinion of this Court that the recommendations of Magistrate Judge Seibert [**Doc. 73**] should be, and are, hereby **ORDERED ADOPTED** for reasons more fully stated in the report. As such, the defendant's Motion to Dismiss [**Doc. 45**] is **GRANTED IN PART AND DENIED IN PART**; the Motion to Dismiss Travis Frye Complaint [**Doc. 49**] is **DENIED AS MOOT**; the Motion to Dismiss by Larry Williamson [**Doc. 53**] is **GRANTED**; the Motion for Joinder in Motion to Dismiss by Larry Williamson [**Doc. 72**] is **GRANTED**; the defendants' Motion to Dismiss pursuant to Rule 41(2)(b) of the Federal Rules of Civil Procedure [**Doc. 67**] is **GRANTED**; and the plaintiff's complaint [**Doc. 1**] and amended complaint [**Doc. 12**] are hereby **DISMISSED WITH PREJUDICE**. Accordingly, this action is **ORDERED STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to mail a copy to the *pro se* petitioner.

DATED: March 12, 2009.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE